IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/12/2003

CORAM

THE HONOURABLE MR. JUSTICE F.M.IBRAHIM KALIFULLA

W.P.No. 17692 of 1999
and W.P.Nos, 18189, 18190 of 1999,
6484, 6499, 10345, 15567 of 2000,
3963 to 3967, 5322 to 5326, 6498 to 6502,
6822 to 6824, 6847, 6893 to 6897, 7248 to 7252, 12578 to 12585,
23743, 24114, 25708, 26180, 26290, 26249 of 2001,
482, 2482, 2818, 23028, 23032, 24001, 41922 of 2002,
2655, 2768, 2985, 3127, 3254, 3394, 10934, 10961,25708, 27009,
28381, 28437, 29862, 29960 and 32252 of 2003

And

W.M.P.Nos.25750, 26497, 26498 of 1999,
10345 of 2000, W.P.M.P.Nos. 3370 to 3377,
9745, 9747, 9749, 9776, 35680, 38702, 38828 of 2001,
762, 3451, 3962, 31756, 31764, 33005 of 2002,
3324, 3483, 3735, 3919, 4085, 4265, 13752, 13784, 15818, 34675,
34748, 36556, 36418, 32989, 32252 of 2003

W.P.No.17692 of 1999:

The Superintending Engineer
Vellore Electricity Distribution Circle,
Gandhi Nagar,
Vellore-6. .. Petitioner

-Vs-

1. The Labour Inspector,
Vellore.
2. V.Bakthavatchalam
3. S.R.Munisamy
4. D.Kannabiran
5. K.Kumaresan
6. S.Suresh
7. P.Subramanian
8. M.Sekar
9. V.Kumaran
10.T.Maniarasan
11.G.Ramesh
12.G.Selvaraj
13.D.Kuppan

14.R.Nagesh
15.A.Pandurangan
16.S.Umapathy
17.K.Dharmendran
18.P.Sankar
19.K.Kumaresan
20.K.Mani
21.S.Senthilkumaran
22.K.Venkatesaperumal
23.G.Vikrammthithan
24.S.Ramesh Babu
25.P.Sakthivel
26.S.Mohan
27.A.Kumar
28.V.Elumalai
29.M.Manoharan
30.A.Saravanan
31.V.Harikrishnan
32.G.Sankar
33.S.Ramu
34.K.Jagadeeswaran
35.R.Mohandoss
36.D.Asokan
37.D.Mohandoss
38.A.Varadhan
39.M.Sathianathan
40.S.Dakshinamoorthy
41.V.Umapathy
42.D.Rajesh
43.P.Palani
44.R.Sampath
45.M.Dhanasekaran
46.R.Arumugam
47.G.Dinakaran
48.P.Lakshmanan
49.S.Sekar
50.K.Umapathy
51.S.Murugan
52.P.Kumar
53.M.Gangadharan
54.M.Jalanathan
55.M.Murugan
56.R.Jaisankar
57.M.Mohamed Basha
58.G.Narasimhan
59.S.Kasi
60.M.Haridoss
61.N.Damodaran
62.V.Loganathan
63.S.Kotti
64.V.Palayam

65.M.Sukumar
66.V.Paul Ramesh
67.V.Vasu
68.S.Damodaran
69.J.Jayachandran
70.N.Narayanamoorthy
71.M.Partheepan
72.K.Munusamy
73.K.Kumaravelu
74.P.Vasanthakumar
75.S.J.Sundaramoorthy
76.R.Muthu
77.K.Gunasekaran
78.J.Jeevarathinam
79.D.Selvam
80.A.Seenivasan
81.A.Murugan
82.S.T.Neelamegam
83.A.Kantharaj
84.S.Vedantham
85.G.Vinayagam
86.R.Kamalanathan
87.A.Sakthivel
88.N.Punniyakotti
89.K.Chandrakanthan
90.M.Perumal
91.J.Harikeerthi
92.P.Mohan
93.N.Kanniappan
94.K.Raja
95.E.Ravi
96.N.Dayalan
97.A.Balasubramani
98.E.Murugesan
99.G.Vijayendran
100.M.Ramamoorthy
101.S.Asokan
102.R.Arumugam
103.K.Munirathinam
104.V.Muthusaravanan
105.S.Sudhakar
106.M.Dakshinamoorthy
107.K.Venkatesan
108.G.Thulasitharan
109.V.Venkatesan
110.K.M.Kathavarayan
111.M.Gangadurai
112.S.Vasudevan
113.S.Palani
114.G.Kannan
115.A.Achuthananthan

116.L.Palaivel
117.K.Meganathan
118.G.Pachaiappan
119.S.Lareence
120.R.Cchandrasekaran
121.K.Subramanian
122.E.Kaverthanan
123.Mohamed Ghouse
124.A.Mohamed Abdulla
125.R.Rajaraman
126.G.Manoharan
127.K.M.Anvazhagan
128.T.Muniyan
129.R.Gopal
130.E.Ravi
131.K.Elumalai
132.T.Bhoopathy
133.P.R.Sampathkumar .. Respondents

For Petitioner:: Mr.M.Altaf Ahamed,
Addl.Solicitor General of India
assisted by
Mr.V.Radhakrishnan

For Respondents::Mr.MGH Varadarajan, AGP for R1
M. Arumugham for
for M/s.Iyer & Dolia -R2 to R133
Mr.N.G.R.Prasad for RR in
W.P.No.18189 of 1999
Mr.Balan Haridoss for RR in
W.P.No.23743 of 2001
Ms.Geetha for RR in
W.P.No.26290 of 2001

:COMMON ORDER

In this batch of cases, except W.P.Nos.12578 to 12585 of 2001, all other writ petitions have been filed by the Tamil Nadu Electricity Board, challenging the orders of the respective Inspectors of Labour, in and by which, the said Inspectors of Labour, functioning under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act 1981 and the Rules framed thereunder (hereinafter called 'the Act' and 'the Rules') passed orders, directing the Tamil Nadu Electricity Board to confer permanent status to the respective workmen in these writ petitions as per Section 3 of the said Act.

2. In W.P.Nos.12578 to 12585 of 2001, the concerned workmen through their union seek issuance of a Writ of Mandamus to direct the Tamil Nadu Electricity Board and its officials to implement the order of the Inspector of Labour dated 04.12.2000 and grant monetary benefits in terms of

the said order to the seven workmen concerned in those writ petitions.

3. Mr. Altaf Ahmed, learned Additional Solicitor General, while appearing on behalf of the Board has made submissions by referring to the order impugned passed by the Inspector of Labour, the third respondent in W.P.No.24001 of 2002. The learned Additional Solicitor General raised three main contentions. In the first place, he contended that the third respondent passed the impugned order in total misunderstanding of the powers vested in him under the provisions of the Act. In the next place, it was contended that the orders of the third respondent were in breach of the procedure prescribed under the Act. Lastly, it was contended that by passing the impugned order, the third respondent arrogated to himself the powers that are available only with the Adjudicatory Forums constituted under the provisions of the Industrial Disputes Act, 1947.

4. While elaborating on the above said submissions, the learned Additional Solicitor General by referring to Sections 3 and 5 of the Act read along with Rule 6(4) contended that the scope of power and jurisdiction of the third respondent cannot be extended to the extent of granting the relief of conferring permanent status as has been done by the third respondent. By referring to G.O(T) No.616 of Labour and Employment (A1) Department dated 18.07.2000, in and by which the State Government referred the dispute viz., 'the demand of the Union to regularise the service of the Contract Labourers who have put in three to ten years, to the Industrial Tribunal, Chennai, learned Additional Solicitor General argued that the said dispute having been numbered as I.D.No.106 of 2001 on the file of the Tribunal, Chennai, the whole ambit of the issue relating to the regularisation of contract labourers can be considered only in the said dispute, which is the proper forum for dealing with such issues which cannot be done by the third respondent in its limited jurisdiction available under the provisions of the Act.

5. The learned Additional Solicitor General took pains to point out that before the third respondent, the status of the workmen was in the nature of contract labourers and the question about their engagement for continuous period of 480 days in 24 calendar months was also in dispute. According to him, in such a situation the said dispute would fall within the scope of the definition of an 'Industrial Dispute' under Section 2(k) of the Industrial Disputes Act and therefore, such an Industrial dispute could not have been validly adjudicated by the third respondent in his limited jurisdiction. According to the learned Additional Solicitor General, the powers and duties of the third respondent under Section 5 of the Act is limited to the extent of examining the maintenance of registers, records and notices, which cannot be compared to the adjudicatory power vested with the Labour Court or a Tribunal under Sections 11 and 11(A) of the Industrial Disputes Act. According to him, the third respondent as Inspector can only make a spot enquiry and in the event of any defects being noticed in the maintenance of records, he can direct compliance or rectification of such defects and nothing more. By referring to the impugned order of the third respondent, it was further contended that there was absolutely no basic material available for the third respondent to conclude that the concerned workmen had put in more than 480 days in a period of 24 calendar months in order to issue the directions as has been done in the impugned orders.

6. The learned Additional Solicitor General relied upon the judgments reported in 'STEEL AUTHORITY OF INDIA LTD., ..VS.. NATIONAL UNION WATER FRONT WORKERS AND OTHERS' (A.I.R. 2001 S.C. 3527); 'RAJASTHAN STATE ROAD TRANSPORT CORPORATION AND ANOTHER ..VS.. KRISHNA KANT AND OTHERS' (1995 (5) S.C.C. 75); 'C.E.TUTICORIN THERMAL POWER STATION .. VS.. INSPECTOR OF LABOUR, TUTICORIN AND OTHERS' (2002 (9) S.C.C. 752); 'CHANDRAKANT TUKARAM NIKAM AND OTHERS ..VS.. MUNICIPAL CORPORATION OF AHMEDABAD AND ANOTHER' (2002 (2) S.C.C. 542); 'COUNCIL OF SCIENTIFIC AND INDUSTRIAL RESEARCH AND ANOTHER

..VS.. PADMA RAVINDER NATH AND OTHERS' (2001 (9) S.C.C. 526); and 'NATIONAL ENGINEERING INDUSTRIES LTD., ..VS.. SHRI KISHAN BHAGERIA AND OTHERS' (1988 (Suppl.) S.C.C. 82)' in support of his submissions.

7. In reply, Mr.N.G.R.Prasad, learned counsel appearing for the concerned workmen in W.P.No.18189 of 1999 submitted that even according to the Board, the concerned workmen were employed to perform regular jobs though styled as 'contract labourers', that under the provisions of the Act, there is no other forum has been provided for the determination of the rights of the workmen vis-a-vis the management and therefore when the provisions under the Act enables the third respondent not only to inspect the establishment, but also to confer permanent status, there was every jurisdiction vested with the third respondent to pass orders impugned in the writ petitions.

8. According to the learned counsel, admittedly even according to the Board, the concerned workmen were employed as contract labourers and therefore, the third respondent while exercising his powers has only gone into the incidental question as to whether they were really contract labourers or their services were utilised as regular workmen in order to grant the consequential relief to them. According to the learned counsel going by the definition of 'workmen' under the Act, the third respondent had to necessarily decide the said question as an incidental one which was certainly permissible by virtue of the various decisions of the Honourable Supreme Court. Learned counsel further contended that though the said exercise cannot be strictly construed as one of adjudication if can be held that what was done by the third respondent was in the nature of an investigation. According to the learned counsel by holding such an investigation and by granting the relief, the third respondent has not conferred any new right but has only crystallised the right which was failed to be recognised by the Board. Learned counsel relied upon the decisions reported in 196 3 (2) L.L.J. 89 (CENTRAL BANK OF INDIA versus RAJAGOPALAN); 'SAHU MINERALS AND PROPERTIES LIMITED ..VS.. PRESIDING OFFICER, LABOUR COURT AND OTHERS' (1975 (2) L.L.J. 341), 'C.E.TUTICORIN THERMAL POWER STATION ..VS.. INSPECTOR OF LABOUR, TUTICORIN AND OTHERS' (2002 (9) S.C.C. 752), and 'NIRCHILIYA AND OTHERS ..VS.. MANAGEMENT OF SAFIRE THEATRE, MADRAS AND ANOTHER' (1991 (I) L.L.J. 111) in support of his submissions.

9. Mr. Balan Haridoss, learned counsel appearing for the workmen in W.P.Nos.23743 of 2001 and 23032 of 2002 contended that while the workmen can be stated to have the right to raise an Industrial dispute cannot be said to have lost their right to claim benefits available under the Act.

According to the learned counsel, the Industrial Disputes Act does not preclude the rights available to the workmen under the State Act. Learned counsel also relied upon the Division Bench Judgement of this Court reported in 'METAL POWDER CO., LTD., THIRUMANGALAM AND ANOTHER ..VS.. THE STATE OF TAMIL NADU AND ANOTHER (1985 II L.L.J. 376) wherein the provisions of the Act came to be upheld.

10. Ms. Geetha, learned counsel for the workmen in W.P.No.26290 of 2001 relied upon the judgment reported in 'J.VICTOR ..vs.. G.M., RANI MANGAMMAL TRANSPORT CORPORATION' (1998 (I) L.L.J 312); M/S. MARTIN BURN LTD., ..VS.. T.G.MOORJANI AND OTHERS (1974 L.I.C. 968); ' MANAGEMENT OF PITHAVADIAN PARTNERS, REP. BY ITS MANAGING PARTNER ..VS.. CONTROLLING AUTHORITY UNDER THE PAYMENT OF GRATUITY ACT' (1984 L.I.C. 1298); and 'CENTRAL INLAND WATER TRANSPORT CORPORATION ..vs.. SECOND LABOUR COURT AND OTHERS)'(1974 I L.L.J. 445). The learned counsel contended that the concerned workmen in that Writ Petition have already been directed to be regularised by Hon'ble Mr. Justice V.Khalid in his report, which report came to be made pursuant to the order of the Hon'ble Supreme Court and in such circumstances, the authority functioning under the Act was fully justified in granting the relief under the provisions of the Act. On behalf of the workmen, reliance was also placed upon the decisions reported in KSB PUMPS LTD., (REP. BY ITS GENERAL MANAGER) COIMBATORE ..VS.. DEPUTY CHIEF INSPECTOR OF FACTORIES, COIMBATORE (2002 (4) L.L.N. 389) AND 1951 I L.L.J. 213.

11. By way of reply, learned Additional Solicitor General submitted that 'investigation' and 'adjudication' are two different concepts, that while under the former something can only be examined, only in the later there is scope for resolving a controversial dispute. The learned counsel also referred to certain passages from the book " Principles of Statutory Interpretation" by Justice G.P.Singh at pages 345 and 529 and contended that where the very status of the concerned workmen to claim the benefit under the Act is in dispute, such a basic controversial question cannot be decided by the Inspector of Labour in his limited jurisdiction available under the provisions of the Act.

12. Having heard the learned counsel and before attempting to examine the correctness of the orders impugned in these writ petitions, I feel it appropriate to examine the provisions of the Act and also some of the decisions cited at the Bar in order to steer clear of the legal position as regards the power of the Inspectors of Labour conferred upon him under the provisions of the Act. The statement of objects and reasons in relation to the Act is to the following effect:

"Many workers in industrial establishments are being kept under temporary rolls and on that pretext are being denied of various statutory as well as non-statutory benefits which are given to permanent workers. Mainly, in many establishments non-permanent workers are given consolidated wages which are far below the occupational wages and do not carry the benefit of dearness allowance paid to permanent employees. Similarly they are denied various other benefits like payment of festival, cyclone and marriage advances, payment of ex-gratia over and above the statutory bonus, supply of uniforms and tea, preference for the dependants of the employees in the matter

of employment etc., In order to curb various unfair labour practices and following the decision at the 25th meeting of the State Labour Advisory Board the Government have decided to undertake a special legislation to confer permanent status to the workers in various industrial establishments who have put in a service for a period of four hundred and eighty days in a period of twenty four calendar months in such industrial establishments."

13. The preamble to the Act states that it is an Act to provide for the conferment of permanent status to workmen in the industrial establishments in the State of Tamil Nadu. As far as the application of the Act to the Electricity Board is concerned, the same is not in dispute. Section 2(4) of the Act defines a "Workmen" to mean any person employed in any Industrial establishment to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied and includes a Badli workmen. It is common ground that the concerned workmen do not fall within the excluded category. Section 3 of the Act states that notwithstanding anything contained in any law for the time being in force every workman who is in continuous service for a period of four hundred and eighty days in a period of twenty four calendar months in an industrial establishment should be made permanent. Explanation II of the said Section makes it clear that the term "law" for the purpose of the said section would include any award, agreement, settlement, instrument or contract of service whether made before or after the commencement of the Act.

14. Section 5 of the Act enumerates the powers and duties of Inspectors appointed under Section 4 of the Act. Section 5 of the Act can be extracted for better appreciation, which reads as under:-

"Powers and duties of Inspectors: Subject to any rules made by the Government in this behalf, the Inspector may, within the local limits for which he is appointed, -

a) enter at all reasonable times and with such assistants, if any, who are persons in the service of the Government or of any local authority as he thinks fit to take with him, any industrial establishment ;

b) make such examination of the industrial establishment and of any registers, records and notices and take on the spot or elsewhere the evidence of such person as he may deem necessary, for carrying out the purpose of this Act; and

c) exercise such other powers as may be necessary for carrying out the purpose of this Act."

15. Section 7 of the Act specifically provides the non-application of the Act to workmen employed in certain industrial establishments and the Board does not come under any of the said category. Section 9 enables the State Government to exempt conditionally or unconditionally any employer or class of employers or any industrial establishment or class of industrial establishments from the provisions of the Act. But, till date, the Board has not been exempted from the provisions of the Act. Section 10 of the Act empowers the State Government to frame the rules and rules have also been framed by virtue of the said power. Rule 3 prescribes the powers of the Inspector in addition to the power conferred by Section 5 of the Act.

16. Under Rule 6(4) it is provided as follows:-
"Any employee who finds his name not entered in the list referred to in sub-rule (2) or finds that the entries have not been made correctly or finds that though entries regarding his service have been made correctly but he has not attested the entries in the register of workmen in Form I may make a representation to the Inspector concerned. The Inspector after examining the representation to the Inspector concerned. The Inspector after examining the representation or after making enquiries may issue suitable directions to the employer for the rectification of the register in Form I or for the issue of orders conferring permanent status to the workman concerned."
(Emphasis added)

By virtue of Rule 6(1), every employer of an Industrial establishment shall maintain a register of workmen in Form I and shall produce the register whenever it is required by the Inspector having jurisdiction over the industrial establishment. Under Rule 6(3), every employer should send a copy of the up to date list so compiled under sub-rule (2), to the Inspector concerned within 15 days from the expiry of the half year ending with June and December giving the details about the workmen whose names are maintained in Form I.
17. The validity of the above said Act came up for consideration before the Division Bench of this Court in the judgment reported in ' METAL POWDER CO., LTD., THIRUMANGALAM AND ANOTHER ..VS.. THE STATE OF TAMIL NADU AND ANOTHER' (1985 II L.L.J. 376). One of the submissions made before the Division Bench was that as against the order of Inspector, there is no provision for appeal. While dealing with the said contention, the Division Bench ultimately held as under in para 23:-
"23. .... Even the Statute does not make it final and if and when a question arises as to whether the workman is entitled to certain benefits as a permanent workman and a claim is made on the basis of the decision of the Inspector, it is obvious that the decision of the Inspector being summary in nature, the controversy can be properly determined in the appropriate proceedings which may be taken either by the employer or by the workman."

18. While dealing with the power of the Inspector vis-a-vis the benefits to be conferred under Section 3 of the Act, the Divison Bench has held as under in para 20:-
"20. ... The learned Advocate General has, therefore, contended that the function of the Inspector consists only of perusing the registers that are maintained by the employers and consequently, there is no vagueness about ascertaining the periods required to be ascertained for the purpose of Section 3, Sub-Ss.(1) and (2). It is obvious to us that the factors enumerated in Section 3(2) do not require any long procedure for determination. The absence of the workmen can be ascertained from the registers maintained by the employer. Prima facie, the legality or illegality of a strike can also be ascertained depending upon whether the concerned statutory provisions have been complied with or not. All these can properly become the subject matter of the enquiry which is contemplated in Rule 6(4) of the Rules. The stand taken by the learned Advocate General and Mr. Chandran is that the Inspector will give enough opportunity to the employer to put forth his case and produce the necessary material. The latter part of Rule 6 (4) clearly provides that,

the Inspector, after examining the representation or after making enquiries, may issue suitable instructions to the employer for the rectification of the Register in Form I or for issue of orders conferring permanent status on the workmen concerned. Form I contains the proforma of the Register of workmen which has to be maintained by the employer. The information incorporated therein is useful for ascertaining whether the workman is entitled to the benefits of the Act. These columns have to be filled by the employer himself and only if there is a doubt about the correctness of the entries in this register, an enquiry will become necessary. Similarly, the Inspector has to be furnished with the necessary details in form II which will enable him to ascertain whether the law is being complied with or not. We do not find there is anything vague or uncertain in the Act or the Rules which will create difficulties in the implementation of the Act, requiring the provisions of the Act to be struck down."
(Emphasis added)

19. Again as regards the order to be passed by the Inspector of Labour while exercising his powers under Rule 6(4), the Divison Bench has held as under in para 25:-
"25. ....Relying on this decision, Mr. Somayaji has argued that we must read the requirement to make a speaking order in Rule 6(4), when Rule 6(4) provides that the Inspector should examine the representation of the employee and must make the necessary enquiries. This argument must be accepted because, when the Inspector has to determine whether the workman is entitled to the benefit of Section 3 and when the employer contests this right, he has to make the necessary enquiries and these enquiries must culminate in a speaking order disposing of the contentions of the employer and the workman. Whether it is the workman's case or the employer's case which is accepted, the Inspector will be bound to give reasons as to whey he is accepting or rejecting the case of either party".
(Emphasis added)
20. The above said judgment of the Division Bench of this Court was challenged before the Hon'ble Supreme Court and the Supreme Court also confirmed the decision of the Division Bench as reported in ' STATE OF TAMIL NADU AND OTHERS ..VS.. NELLAI COTTON MILLS LTD., AND OTHERS' (1990 (2) S.C.C. 518). In fact, the challenge made by the State was only in respect of that part of the order of the Division Bench, which held that explanation to Section 3 was incapable of enforcement and was consequently held to be redundant. The Supreme Court by taking note of the subsequent validation made after the judgment of the Division Bench upheld the order of the Division Bench.
21. In this context, it is also relevant to refer to the judgment of Hon'ble Mr. Justice P.SATHASIVAM in W.P.No.9729 of 2002 dated 20.08 .2003 wherein the learned Judge following his earlier order in W.P. No.6171 of 1998 etc., batch dated 20.12.2000 dismissed the writ petitions filed by the Electricity Board against similar orders confirming permanent status to certain other workmen. In fact, a Division Bench of this Court in its order dated 24.11.1997 in W.A.No.1445 of 1997 also rejected the claim of the petitioner / Board in challenging similar order of the authority under the Act by holding that there is a statutory obligation on the Board to confer permanent status to concerned workmen. The said order of the Division Bench

was challenged before the Hon'ble Supreme Court and the Supreme Court also confirmed the order of the Division Bench in the judgment reported in 'C.E. TUTICORIN THERMAL POWER STATION ..VS.. INSPECTOR OF LABOUR, TUTICORIN AND OTHERS' (2002 (9) S.C.C. 752). However, in respect of some of the workmen, the Hon'ble Supreme Court held that since the identity relating to them was not made available, the relief granted by the authority cannot be sustained.

22. Reliance placed upon the judgment of the Hon'ble Supreme Court reported in STEEL AUTHORITY OF INDIA LTD., ..VS.. NATIONAL UNION WATER FRONT WORKERS (A.I.R. 2001 S.C. 3527) was for the aspect viz., that in respect of a contract labourer, when the question arises whether the contractor has been interposed as a genuine contractor or was a mere ruse / camouflage to evade compliance of various beneficial legislation, so as to deprive the workers of the benefit thereunder, such disputed questions of facts in regard to contingency of service can be validly agitated only before a forum created under the provisions of the Industrial Disputes Act. Reliance was placed upon paragraph 1 22 (5) as well as paragraph 123, which reads as under:-

"122(5). .... On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse / camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the concerned establishment subject to conditions as may be specified by it for that purpose in the light of para 6 here under.

"123. We have used the expression 'industrial adjudicator' by design as determination of the questions aforementioned requires inquiry into disputed question of facts which cannot conveniently be made by High Courts in exercise of jurisdiction under Article 226 of the Constitution. Therefore, in such cases the appropriate authority to go into those issues will be Industrial Tribunal / Court whose determination will be amenable to judicial review."

23. In the judgment reported in 'RAJASTHAN STATE ROAD TRANSPORT CORPORATION AND ANOTHER ..VS.. KRISHNA KANT AND OTHERS (1995 (5) S.C.C. 75), in paragraph 35, the Hon'ble Supreme Court while summarising the principle, held that wherever the dispute involves recognition, observance or enforcement of any of the right or obligations created by enactment like Industrial Employment (Standing Orders) Act, 1946 and if such enactment does not provide a forum for resolution for such dispute, the only remedy is to approach the adjudicatory forum created under the Industrial Disputes Act.

24. In the judgment reported in 'COUNCIL OF SCIENTIFIC AND INDUSTRIAL RESEARCH AND ANOTHER ..VS.. PADMA RAVINDER NATH AND OTHERS' (2001

(9) S.C.C. 526) the Hon'ble Supreme Court confirmed the view of the Central Administrative Tribunal consisting of five members that the Administrative Tribunals are not substitute for authorities constituted under the Industrial Disputes Act and hence, the Administrative Tribunals do not exercise concurrent jurisdiction in regard to the matters covered under the Industrial Disputes Act. In the judgment reported in 'CHANDRAKANT TUKARAM NIKAM AND OTHERS ..VS.. MUNICIPAL CORPORATION OF AHMEDABAD AND ANOTHER' (2002 (2) S.C.C. 542) the principle set out by the Hon'ble Supreme Court in 'RAJASTHAN STATE ROAD TRANSPORT CORPORATION AND ANOTHER ..VS.. KRISHNA KANT AND OTHERS' (1995 (5) S.C. C. 75) was applied and followed.

25. In 'NATIONAL ENGINEERING INDUSTRIES LTD., ..VS.. SHRI KISHAN BHAGERIA AND OTHERS' (1988 (SUPP) S.C.C. 82) while dealing with the provisions contained in the Industrial Disputes Act and applying the scope of Article 254 of the Constitution that if there was any law by the State which had been reserved for the assent of the President and has received the assent of the President, the State law would prevail in that state even if there is an earlier law by the Parliament on a subject in the Concurrent list and ultimately concluded that there is no inconsistency between these two enactments and these two enactments are supplemental to each other.

26. In the judgment reported in 'CENTRAL BANK OF INDIA LTD., ..VS.. P.S.RAJAGOPALAN' (1964 (3) S.C.R. 140) while dealing with the scope of power Section 33-C(2) of the Industrial Disputes Act., the Hon' ble Supreme Court held as under:-

"Besides, it seems to us that if the appellant's construction is accepted, it would necessarily mean that it would be at the option of the employer to allow the workman to avail himself of the remedy provided by sub-s.(2), because he has merely to raise an objection on the ground that the right claimed by the workman is not admitted to oust the jurisdiction of the Labour Court to entertain the workman's application. The claim under Section 33-C(2) clearly postulates that the determination of the question about computing the benefit in terms of money may, in some cases, have to be preceded by an enquiry into the existence of the right and such an enquiry must be held to be incidental to the main determination which has been assigned to the Labour Court by sub-s.(2). As Maxwell has observed 'where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution (1).' We must accordingly hold that Section 33-C(2) takes within its purview cases of workmen who claimed that the benefit to which they are entitled should be computed in terms of money, even though the right to the benefit on which their claim is based is disputed by their employers."

27. The said ratio laid down by the Hon'ble Supreme Court was subsequently followed in 'SAHU MINERALS AND PROPERTIES LIMITED ..VS.. PRESIDING OFFICER, LABOUR COURT AND OTHERS' (1975 (2) L.L.J. 341).

28. In 'NIRCHILIYA AND OTHERS ..VS.. MANAGEMENT OF SAFIRE THEATRE, MADRAS AND ANOTHER' (1991 (I) L.L.J. 111) Hon'ble Supreme Court held that where remedies are available under the State Act as well as the central Act, irrespective of the fac workmen initially sought for relief under the

Industrial Disputes Act, though did not subsequently pursue the same, they can still seek the very same remedy under the State Act viz., the then Madras shops and Establishments Act, especially when there was no specific bar under either of the enactments in seeking for such a remedy.

29. A Division Bench of Delhi High Court in the decision reported in 'M/S.MARTIN BURN LTD., versus T.G.MOORJANI & OTHERS' (1974 L.I.C. 9 68), while dealing with the claim of an employee under the payment of Gratuity Act held that where the very jurisdiction of the controlling authority was questioned, the authority can make a preliminary determination of the existence of the condition on which the very jurisdiction depends and the authority was not barred from doing so. The Division Bench also held that he need not wait for the decision of the competent court before undertaking any enquiry as that would defeat the very object of the statute under which they function.

30. In the judgment reported in 'KSB PUMPS LTD., (REP. BY ITS GENERAL MANAGER) COIMBATORE ..VS.. DEPUTY CHIEF INSPECTOR OF FACTORIES, COIMBATORE' (2002 (4) L.L.N. 389) the Hon'ble Mr. Justice P.K.MISRA while dealing with a similar issue arising under the Act has considered the scope of Rule 6(4) and has held as under:-

"Law is now well settled that even the authorities, while dealing with an administrative matter, may be required to follow the principles of natural justice, if the facts and circumstances of the particular case so warrant. Even assuming that the Inspector is merely an administrative authority, rule 6(4) itself contemplates that he can make an enquiry and thereafter issue suitable direction to the employer. This is clear from the expression as contained within rule 6(4) to the following effect:-

".....The Inspector after examining the representation or after making enquiries, may issue suitable direction to the employer....."

Since the Inspector can make enquiry, it does not prejudice anybody, if the Inspector makes such an enquiry in the presence of both the parties and called upon the parties to produce materials in respect of their respective contentions. In the present case, the representation has been filed before the Inspector and the Inspector called upon both the parties to furnish material even in the shape of oral evidence. I do not think the adoption of such a course by the Inspector has at all prejudiced the present petitioner, as the petitioner can avail of the opportunity before the Inspector."

31. In the above stated legal background, we have to analyse the impugned orders in the writ petitions. I find that in all the cases, the respective workmen have uniformly claimed before the concerned Inspector of Labour that they have been working in different sections of the Tamil Nadu Electricity Board for not less than 240 days in a year, that they have been carrying out jobs as mentioned in their applications, that they have received wages as per the amounts entered in the petty cash book or K-2 agreement or chit agreement, which are maintained by the respective Assistant Engineers / Junior Engineers or stores officers, that in proof of having worked for several years, they have been issued with certificates by the respective Junior Engineers of the Board, that the proof of having worked for the required number of days are entered in the registers maintained by the stores

officers and Assistant / Junior Engineers, that in effect they were being paid daily wages and therefore, they are entitled for conferment of permanent status under the Act. In fact, each of the concerned workmen who moved the concerned Inspectors of labour have gone into the box and have deposed confirming whatever they have stated in their respective applications and in the oral evidence, all the concerned individual workmen specifically stated that they have been doing works like erection of poles, stringing of lines, maintenance of transformer, handling of lines, maintenance of transformer, handling of materials in stores etc. They have also stated that they have worked more than 480 days in 24 calendar months and they should have been conferred with permanent status. The respective certificates issued by the concerned Junior Engineer or Assistant Engineer were also marked before the Inspector of Labour wherein it has been certified that the concerned workmen are in service continuously over a long period. In the applications also they have mentioned the date when they commenced their work with the concerned junior engineer or assistant engineer. The qualification and date of birth have also been mentioned.

32. While so, on behalf of the board, it was contended that there was no agreement with the concerned workmen for doing the jobs like erection of polies, stringing of lines and handling of materials in the stores. According to the petitioner / Board, such works were executed on contract basis under certain guidelines and that concerned contractors used to engage the requisite labour and pay the wages to the persons employed by him. The petitioner / Board therefore contended that there was no direct employer and employee relationship between the board and the concerned workmen. It was the definite case of the Board that no attendance register was maintained and therefore, the claim of the workmen that they have worked more than 240 days in a year was not true. As far as the certificates issued to the concerned workmen by the Junior / Assistant Engineers, it was contended that such officers were not empowered to issue such certificates. It was contended that since none of the concerned workmen in these writ petitions were governed by the report of Hon'ble Mr. Justice Khalid, who came to be appointed by the order of the Hon'ble Supreme Court they were not entitled for any relief. It is necessary to be stated that no oral evidence was let in on the side of the Board and there was also no cross-examination of the deposition of the concerned workmen before the Inspector of labour. In the above stated situation, the question for consideration is as to whether the conclusion of the Inspector of Labour that the concerned workmen had put in more than 480 days in 24 calendar months was correct and consequently they are entitled for the conferment of permanent status as has been granted.

33. While considering the said question, it will have to be stated that while on the one hand the evidence placed before the Inspector of Labour on the side of the concerned workmen remained, the same was also not controverted, no iota of evidence was placed on the side of the Board as to either about the nature of the employment or about the details of their employment. The Board was rest content with the various contentions raised by it in its counter. But, the fact about the engagement of the services of the concerned workmen was never disputed by the Board. The only stand was that since they were all contract workmen, they were not entitled for any benefit to be conferred under the provisions of the Act. But even in respect of the

said stand except the ipsi dixit of the stand taken in the counter nothing was placed before the Inspector of Labour. Even about the nonmaintenance of the required Forms under the provisions of the Act, the stand of the Board was that since they were all contract labourers, the question of maintaining those records did not arise. It is pertinent to note that while it was contended that the persons were employed as contract labourers under certain guidelines, nothing was placed before the Inspector of Labour in support of the said stand. The claim of the concerned workmen was that under the guise of contract labourers, they were asked to perform various jobs, which were required to be performed by the regular employees of the Board.

34. In this background of the fact situation, when the Inspector of Labour was called upon to exercise his powers under Section 5 of the Act read with Rule 6(4), the Board cannot expect the authority to close the proceedings by holding that irrespective of the indifferent attitude displayed by the Board before the Authority, the concerned workmen cannot be conferred with the permanent status. Therefore, when the contention of the learned Additional Solicitor General that the authority mis-understood the power vested in him while passing the impugned order is considered, it can only be said that the exercise of powers and duties conferred on the Inspector of Labour under Section 5 read along with Rule 6(4) he was fully empowered the pass appropriate orders in fulfillment of the object of the Act, when the necessary materials for achieving the same were placed before him. If the various ingredients of Section 5 of the Act is looked into, I find that the Inspector of Labour has been invested with the necessary power to inspect any industrial establishments and apart from examining the relevant registers and records can also record the evidence of such persons as he may deem it necessary either in the establishment itself or elsewhere for the purpose of carrying out the object of the Act. Section 5(c) of the Act also states that the Inspector can exercise such other powers as may be necessary for carrying out the purposes of the Act. Therefore, a reading of Section 5 on the whole makes it clear that the Inspector of Labour who exercise his powers contained therein should exercise such powers in such a way that the purpose of the enactment is fulfilled, and not defeat such purpose even if any such attempt is made by any party. When such is the pre-dominent idea behind the investing of the power with the Inspector of Labour under Section 5 of the Act, I am afraid that the Board can decline to avail the opportunity afforded to it when the concerned workmen moved the Inspector of Labour to hold an enquiry in order to examine whether or not they are to be conferred with the permanent status by virtue of their continued employment, but still the Inspector of Labour should refrain himself from exercising his powers and reject the application of the workmen. Under Rule 6(4), it is specifically provided to the effect that-

"..... The Inspector after examining the representation or after making enquiries may issue suitable directions to the employer for the rectification of the register in Form I or for the issue of orders conferring permanent status to the workman concerned."

Therefore, it can be safely held that by virtue of Section 5 read along with Rule 6(4), the Inspector of Labour can pass positive orders conferring

permanent status to the workmen concerned after examining the representation made before him and after holding an enquiry. The Division Bench of this Court has also held so in the judgment reported in 1985 (II) LLJ 376 (cited supra). In spite of all these, if it were to be held that irrespective of the said statutory stipulations the Inspector of Labour is not entitled to pass positive orders conferring permanent status, such powers vested with him under the provisions would only result in futility. I am afraid that the submission so made on behalf of the Board can be accepted. It is true that under Section 5 read with Rule 6(4) of the Act, the Inspector of Labour can also direct in the event of any defects in the maintenance of registers to rectify such defects and give appropriate

directions to that effect. But, the same did not mean, that, that is the only power vested in the Inspector of Labour and nothing more. The well known canon of construction is that no provision in a statute can be held to be redundant and therefore, when under Section 5 of the Act specific powers have been provided to the effect that the Inspector of Labour can enter at all reasonable times into any industrial establishments, make necessary examinations of the records and record necessary evidence of such persons as he may deem necessary for carrying out the purposes of the Act and when the said provisions read along with Rule 6(4) which specifically provides that such exercise of powers provided under Section 5 can be made while dealing with a representation and by passing a positive order conferring permanent status, it will have to be held that the Inspector of Labour would be fully competent to issue an order conferring permanent status to the workmen based on the evidence available before it based on the enquiry held by him, if it was brought out that such a benefit should necessarily be conferred on the concerned workmen. I can only say that to hold otherwise would only defeat the whole purpose of the Enactment, the object of which was that wherever workmen are being kept under temporary roles, thereby denied of various statutory as well as nonstatutory benefits, which are extended to the permanent workers and wages are paid on consolidated basis far below the occupational wages without the benefit of Dearness Allowance, which is paid to the permanent employees, to defeat such deprivation and ensure that their real status is affirmed.

35. Therefore, I am unable to accept the submission made on behalf of the Board that the exercise of the power by the Inspector of Labour in conferring permanent status after holding necessary enquiries contemplated under Section 5 read along with Rule 6(4) should be construed as arrogating to himself the powers available to the other adjudicatory forums created under the provisions of the Industrial Disputes Act 1947. It will have to be stated that while the exercise of powers vested with the Inspector under the provisions of the Act is summary in nature, the one under the provisions of the Industrial Disputes Act may be an elaborate one. Nevertheless the same does not mean that by exercising the power under the provisions of the Act the Inspector of Labour would be trespassing into the adjudication process contemplated under the provisions of the Industrial Disputes Act. In this context, if the judgment of the Supreme Court reported in ' NIRCHILIYA AND OTHERS ..VS.. MANAGEMENT OF SAFIRE THEATRE, MADRAS AND ANOTHER' (1991 (I) L.L.J. 111) is applied, it can be safely held that where there is no

prohibition under the provisions of either the Industrial Disputes Act or the Act, exercise of the power in the manner in which it can be done by the Inspector of Labour under the Act cannot be found fault with. It will have to be stated that such an exercise would be well within the statutory limitations provided under the Act. In fact, in the above referred to judgment of the Hon'ble Supreme Court, the question for consideration was whether the workmen who initially raised an industrial dispute under the Industrial Disputes Act and who did not pursue it till its logical end when chose to move the authority under the then Madras Shops and Commercial Establishment Act, the Hon'ble Supreme Court held that in the absence of any prohibition under either of the enactments, such a course adopted by the workmen cannot be faulted. Therefore, applying the said ratio to the case on hand, it can be safely held that the concerned workmen here were placed in a better footing when they chose to straightaway move the Inspector of Labour under the Act, inasmuch as according to the workmen, having regard to the facts prevailing as on date, they were entitled for the conferment of permanent status as provided under the Act. If such a claim of the workmen was not factually maintainable, it was for the Board to have resisted the said claim with all available materials and could have convinced the Inspector of Labour as the claim ought not to have been countenanced. The Board having miserably failed to perform its duties in the manner expected of it, it cannot be now allowed to contend or complain against the powers exercised by the Inspector of Labour which was within the provisions of the Act. In this context, if the judgment of the Division Bench of this Court reported in 'METAL POWDER CO., LTD., THIRUMANGALAM AND ANOTHER ..VS.. THE STATE OF TAMIL NADU AND ANOTHER' (1985 II L.L.J. 376) is applied, then also it can be safely held that the Inspector of Labour was well within his jurisdiction in holding the proceedings in the manner it was held and in passing the order by directing the petitioner / Board to confer permanent status on the workmen.

36. The contention of the learned Additional Solicitor General that the observation of the Division Bench in paragraph 23 in stating that the proceedings under the Act are summary, that the statute does not make it final and if and when question arises as to whether the workmen is entitled to certain benefits as a permanent workmen and the claim is made on the basis of the decision of the Inspector, the other controversies can be properly determined in the appropriate proceedings, which may be taken either by the employer or by the workmen; supports the submission of the Board, that the scope and power of the Inspector was limited to the extent of inspecting the registers and issue directions for rectifications in the maintenance of such registers and not to the extent of giving any positive directions to confer permanent status cannot be accepted. I say so because when the above said observations of the Division Bench is closely read, it can be seen that the Division Bench has only suggested to the effect that after the conferment of permanent status, that may be directed to be made by the Inspector of Labour, when any question arises as to what kind of benefits are to flow from such conferment, then such controversies relating to the extent of the consequential benefits to be extended may have to be adjudicated upon at the instance of either the employer or the workmen before the appropriate forum. I am of the view that the above said observations of the Division Bench cannot be taken to mean that the specific powers conferred on the Inspector of Labour under the provisions of the Act themselves are to be denied to the Inspector

of Labour and that the whole issue as to whether a concerned workmen should be conferred permanent status itself could again be agitated before some other adjudicatory forum much less the forum created under the Industrial Disputes Act. In my view, such an extreme proposition would negate the very purport of the enactment and would be doing violence to the intention of the legislature which seeks to confer certain benefits as specifically stat ed in the objects and reasons of the Act, especially when the relevant provisions conferring such powers with the Authority under the Act, having been upheld by the Division Bench of this Court, which has also been confirmed by the Hon'ble Supreme Court.

37. At best, the submission made on behalf of the Board that the rights of the workmen can be worked out under the provisions of the Industrial Disputes Act, can reasonably stated to be acceptable to the extent that when such conferment of permanent status is ordered, such permanent status can be at a level which according to the Board that was in existence as on the date as claimed by the workmen and that if any controversy should arise on the stand of the Board while conferring permanent status as directed by the Inspector of Labour and in the event of any necessity arising for determining such a controversy, either the Board or the workmen may have to work out their remedy by invoking the provisions of the Industrial Disputes Act. Certainly, the submission made on behalf of the Board cannot whittle down the very exercise of power available to the Inspector of Labour under the provisions of the Act and the power having been thus exercised as per the orders impugned in these writ petitions.

38. The submission made on behalf of the Board by relying upon the observation of the Division Bench contained in paragraph 23 if analysed in yet another angle also, it can be stated that the observation of the Division Bench can only be taken to mean that the exercise of power by the Inspector of Labour being summary in character can be properly questioned by challenging the same by resorting to the constitutional remedy under Article 226 of the Constitution. In line with the above view of mine, I can validly refer to the judgment of the Hon'ble Supreme Court reported in 'CHRISTIAN MEDICAL COLLEGE HOSPITAL EMPLOYEES' UNION AND ANOTHER ..VS.. CHRISTIAN MEDICAL COLLEGE VELLORE ASSOCIATION AND OTHERS' (1988 (I) L.L.J. 263). In the said judgment, the question which arose for determination was whether certain of the provisions of the Industrial Disputes Act were applicable to the educational institutions established and administered by minorities which are protected by clause 1 of Article 30 of the Constitution. When it was contended by the management of the minority institutions that in the event of the adjudicatory forum created under the provisions of the Industrial Disputes Act passing any order under the relevant provisions against the institution, the same would amount to abridging the right of the minority institution to establish or administer the educational institutions. The said submission was made on the footing that as against the award or orders of the adjudicatory forums under the provisions of the Industrial Disputes Act, no statutory appeal was provided. Dealing with the said contention, the Honourable Supreme Court has held in paragraph 12 as under:-

"The Act in general applies to all industries irrespective of the religion or caste to which the parties belong. It applies to industries owned

by the Central and the State Governments too. Any decision given by the Industrial Tribunal or a Labour Court under the Act is subject to judicial review by the High Court under Article 226 of the Constitution of India and an appeal to this Court under Article 136 of the Constitution of India. The Labour Court, the Industrial Tribunal, the High Court and this court while dealing with matters arising out of the Act have to deal with them objectively. The smooth running of an educational institution depends upon the employment of workmen who are not subjected to victimisation or any other kind of maltreatment. The conditions of service of workmen in all institutions including minority educational institutions have to be protected in the interest of the entire society and any unfair labour practice, such as 'hiring and firing' termination or retrenchment of the service of a workman on irrational grounds, will have to be checked."

Therefore the reading of the observations of the Division Bench in paragraph 23 being in tune with the ratio of the Hon'ble Supreme Court referred to above, it can be held that the direction of Inspector of Labour to confer permanent status when came to be made in summary proceedings, nevertheless in the event of any blatant error or arbitrary exercise of power, resulting there from, such orders can be validly questioned by invoking appropriate constitutional remedies. The said observation of the Division Bench therefore cannot be taken to mean that the Inspector of Labour has no jurisdiction to pass an order giving a positive direction to confer permanent status in exercise of his powers under Section 5 read along with the relevant Rules.

39. The contention of the learned Additional Solicitor General by placing reliance upon paragraph 122(5) of the judgment of the Hon'ble Supreme Court reported in 'STEEL AUTHORITY OF INDIA LTD., ..VS.. NATIONAL UNION WATER FRONT WORKERS AND OTHERS' (A.I.R. 2001 S.C. 3527) is concerned, it will have to be held that the said ratio laid down by the Hon'ble Supreme Court are only in the context of the facts involved in that case. The appellants in those cases were faced with the situation where admittedly persons came to be employed as contract labourers in connection with the work of the establishment and by virtue of the said status as contract labourer by carrying out certain works in connection with the work of the establishment when a claim came to be made for absorption as the workmen of the principal employer, the Honourable Supreme Court held in paragraph 122 (5) of the judgment that such a controversy would form part of an issue to be agitated upon as an industrial dispute before the appropriate adjudicatory forum created under the provisions of the Industrial Disputes Act as the same would involve a debate as to whether the contractor had been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labourer for the work of the establishment under a genuine contract or as a mere ruse / camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefits thereunder. In the said context, the Honourable Supreme Court held that if the contract was found to be not genuine, then the so called contract labourer will have to be treated as employees of the employer, and could be directed to regularise the services of the contract labour in the concerned establishment subject to the conditions as may be specified by it for that purpose. In paragraph 123, the Honourable Supreme Court made it

clear that such an adjudication would be necessary as determination of the various questions would require an enquiry into the disputed questions of fact, which cannot be conveniently made by the High Courts in exercise of its jurisdiction under Article 226 of the Constitution of India.

40. In this context, the Hon'ble Supreme Court also took note of the fact that under the provisions of the Contract Labour Regulation and Abolition Act, there is no procedure prescribed or authority constituted to carry out the above said exercise. Therefore, it became necessary to be stated that such controversies could be validly agitated before the appropriate forum created under the Industrial Disputes Act. As rightly submitted by Mr. N.G.R.Prasad, learned counsel appearing for some of the workmen, under the provisions of the Act where specific powers have been defined and invested with the Inspector of Labour to carry out the purpose of the enactment viz., to ensure conferment of permanent status in the event of the necessary contingencies being satisfied, it cannot be held that the only remedy available to the workmen concerned is still to move the appropriate adjudicatory forum under the provisions of the Industrial Disputes Act.

41. As far as the order of reference which came to be made at the instance of some other workmen in G.O(T) No.616 of Labour and Employment (A1) Department dated 18.07.2000 through certain unions, whereby the dispute came to be referred in respect of certain other similarly placed workmen, it will have to be stated, that, that by itself cannot be taken to mean, that, that is the only remedy available for adjudicating their rights. At the risk of repetition it will have to be stated that though the petitioner / Board would claim that the workmen covered by the impugned orders were contract labourers, there was no iota of evidence in support of the said claim or so to say that they were contract labours at all. On the other hand, the un-rebutted evidence placed before the Inspector of Labour disclose that the concerned workmen came to be employed by the officials of the petitioner / Board directly and by making payment of salary also after extracting the work from the concerned workmen. Therefore, I am unable to countenance the submissions made on behalf of the petitioner/Board that the only forum available for the concerned workmen is to move the Industrial Tribunal created under the provisions of the Industrial Disputes Act and not by resorting to an application before the appropriate Inspector of Labour constituted under the provisions of the Act.

42. In the light of my above said conclusion, I do not find any scope to refer to the various other decisions relied upon on behalf of the petitioner / Board except the judgment of the Hon'ble Supreme Court reported in 'C.E.TUTICORIN THERMAL POWER STATION ..VS.. INSPECTOR OF LABOUR, TUTICORIN AND OTHERS' (2002 (9) S.C.C. 752) where in respect of similarly placed workmen whose claims came to be accepted and the conferment of permanent status granted by the Inspector of Labour, Tuticorin was upheld by this Court, which was also confirmed by the Hon'ble Supreme Court. Therefore, it will have to be held that the course adopted by the concerned workmen who were similarly placed like that of the workmen covered in the above referred to judgment of the Hon'ble Supreme Court are equally entitled to rely upon the above said decision to support the orders impugned in these writ petitions.

43. Be that as it may, it will have to be held that the

conferment of permanent status which has been directed to be accorded by the orders impugned in the writ petitions can only be taken to mean that the status of the concerned workmen which were hitherto a nebulous one would become a permanent one with the petitioner / Board. The question whether such a conferment of permanent status would entitle the concerned workmen to claim regularisation in a particular category in the services of the petitioner/ Board requires further consideration by the Board. I am of the view that while the conferment of permanent status would ensure to the concerned workmen their permanent employment with the petitioner/board, in what category or post in which they are to be regularised is a matter which will have to be worked out by the petitioner / board by passing appropriate orders. The conferment of permanent status in the services of the Board in the appropriate position befitting the nature of employment hitherto performed by the concerned workmen as ordered by the Inspector of labour should be appropriately made by the Board. Inasmuch as the Inspector of Labour having crystallised the position that the concerned workmen have acquired the status of permanency in the employment of the petitioner / Board, the consequential details of such permanent status will have to be specified by the petitioner Board by issuing appropriate proceedings. In other words, the petitioner Board will have to pass appropriate orders relating to the concerned workmen be in any existing category of employment or by virtue of the nature of jobs hitherto performed by them, they are to be fitted in any other post with the corresponding scale of wages/scales/etc. and the other benefits available to them to be prescribed by the petitioner Board. In the event of such proceedings issued by the petitioner / Board creating any controversy or dispute by the concerned workmen therefor the said issue may have to be appropriately thrashed out in the manner known to law. Having regard to the positive directions issued by th e Inspector of Labour, it is incombent on the part of the petitioner / Board to pass appropriate proceedings conferring permanent status to the concerned workmen in accordance with law.

44. The failure of the petitioner / Board in not passing appropriate proceedings necessitated the petitioners in W.P.Nos.12578 to 12585 of 2001, in which direction by the Inspector of Labour to confer permanent status came to be made long before. Though the petitioner / Board seeks to challenge those orders in W.P.Nos.25708 of 2001 and 2700 9, 28381, 28437, 29862, 29960 & 32252 of 2003, in the light of my conclusion in these writ petitions, I am of the view that the petitioner Board should pass appropriate proceedings complying with the directions of the Inspector of Labour as per the orders impugned in the writ petitions.

45. In fine, W.P.Nos.12578 to 12585 of 2001 filed by the workmen are allowed with a direction to the respondent / Board to pass appropriate proceedings as stated above within a period of six months from the date of receipt of a copy of this order. All the other writ petitions filed by the Tamil Nadu Electricity Board, challenging the orders of the Inspector of Labour are dismissed. No costs.

Index: Yes
Internet : Yes

suk/dpn

To

The Labour Inspector,
Vellore.